

JESUS ALFREDO AYALA ESCALANTE,)	No. CV 12-10569-CAS
Petitioner,)	MOTION TO STAY PENDING
)	EXTRADITION (Docket #16, filed July
vs.)	24, 2013)
ERIC HOLDER,)	
Respondent.)	

In its order dated July 9, 2013, the Court denied the petition. Dkt. #12. On July 15, 2013, petitioner filed an appeal from the Court's order. Additionally, on July 24, 2013, petitioner filed a motion requesting that the court issue an order staying

petitioner's extradition pending his appeal. The government filed an opposition on August 14, 2013. After consider the parties' arguments, the Court finds and concludes as follows.

II. LEGAL STANDARD

"A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." Nken v. Holder, 556 U.S. 418, 433 (2009) (internal citations and quotation marks omitted). Courts consider four factors when considering whether to issue a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Leiva-Perez v. Holder, 640 F.3d 962, 964 (9th Cir. 2011); Artukovic v. Rison, 784 F.2d 1354, 1355 (9th Cir. 1986) (applying these factors when considering stay of extradition pending appeal). Regarding the first factor, likelihood of success on the merits, a stay may only issue if the petitioner demonstrates either a probability of success on the merits or that serious legal questions are raised, depending on the strength of the petitioner's showing as to the other factors. Leiva-Perez, 640 F.3d at 967 (quoting Abbassi v. I.N.S., 143 F.3d 513, 514 (9th Cir 1998)).

III. ANALYSIS

Here, a denial of petitioner's application for a stay is required because he has made no showing of either a probability of success on the merits or that serious legal questions are raised by his appeal. The only question raised by the petition is whether there is competent evidence in the record below to support a finding that probable cause exists to conclude that petitioner committed the alleged kidnapping. As explained in the Court's order, under binding Ninth Circuit law, competent evidence exists because the decision below properly relied on eyewitness identifications, even though the

1 identifications were based on a single photograph and not a six-pack photospread.
2 Manta v. Chertoff, 518 F.3d 1134, 1145 (9th Cir. 2008) (“The credibility of the reported
3 identification is a matter committed to the magistrate and is not reviewable on habeas
4 corpus. . . . An identification based on a single photograph may be competent evidence
5 of identity in an extradition proceeding.”); Quinn v. Robinson, 783 F.2d 776, 815 (9th
6 Cir. 1996) (“An identification does not fail to constitute competent evidence merely
7 because the required United States procedures for admissibility of the identification at
8 trial were not followed.”); Dkt. #12 at 3 – 4 (discussing Quinn and Manta).

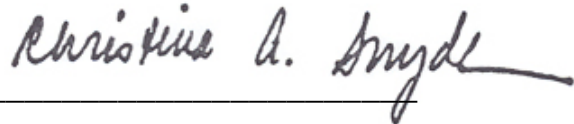
9 Because there is no showing of likelihood of success, the Court finds that the
10 request for a stay should be denied.

11 **IV. CONCLUSION**

12 In accordance with the foregoing, the request for a stay pending appeal is hereby
13 DENIED.

14 IT IS SO ORDERED.

15 Dated: August 14, 2013



17 CHRISTINA A. SNYDER
18 United States District Judge
19
20
21
22
23
24
25
26
27
28